

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**



**On Appeal to the Board of
Appeals and Interferences**

Appellant(s) : Chris Boardman Examiner: Michael C. Heck
Serial No. : 09/730,266 Group Art Unit: 3623
Filed : December 5, 2000
Title : SYSTEM AND METHOD FOR ESTIMATING PRODUCT
DISTRIBUTION USING A PRODUCT SPECIFIC UNIVERSE

REPLY BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant files this paper in response to the Examiner's Answer mailed on December 21, 2006. Further, Appellant requests an Oral Hearing.

I. Appellant's Response to Section (4) - Examiner's Response to Status of Claims

The Examiner correctly indicates the present status of amendments after final. The claim amendments listed in the after final Reply filed on November 7, 2005, have kindly been entered.

II. Appellant's Response to Section (11) - Examiner's Response to Arguments

The Examiner's response does not specifically address the arguments presented in Appellant's brief, but merely reproduces verbatim the response to arguments from the Final Office Action dated May 12, 2005.

Appellant notes that the grounds for the claim rejections are based on Examiner's faulty technical assumption "that all sales data regardless of the source is sales data." (See Examiner's Grounds of Rejection, Section 9, page 3 lines 10-11). This assumption fails to recognize the art or science of statistical sampling and estimation, and the outstanding problems thereof.. Specific prior art problems in product sales estimation are described in the Background Section of the specification (See specification, page 2 line 9- page 4 line 9). Appellant, who is the business of computing and providing market research based on statically sampling, has practical experience that all sales data samples are not the same. Appellant, in particular, notes that the specification outlines the problem with the sales data sampling and estimation technique described in co-owned Felthausen et al. U.S. patent No. 5, 781,893. (See specification, page 3 line 14 - page 4 line 9). Felthausen's geo-spatial projection technique assumes that the product market is geographically homogeneous and that a few randomly selected data samples are representative of the entire retail market. Retail sales data samples that are collected on the assumption of retail market uniformity do not (in theory and in Appellant's practical experience) provide reliable or useful sales estimates for a product that has an inhomogeneous or sparse market presence.

Applicant further notes that Examiner misreads Berne's relevance to the problem of sales estimation of a product with an inhomogeneous market presence. The Examiner correctly notes that Berne relates to manufacturing-to-sales supply chain solutions from raw materials through distribution. (See Examiner's Grounds of Rejection, Section 9, page 6 lines 1-3). The Examiner assumes that Berne's "[t]he 'sales forecast' and customer requirements strongly suggest" the presence or availability of wholesale purchasing data. (See Examiner's Grounds of Rejection, Section 10, page 10 lines 8-10). Even if the presence or availability of wholesale purchasing data is accepted as conventional, it is axiomatic that to establish obviousness there must be some suggestion or motivation to modify the references or to combine the teachings. The mere availability of wholesale purchasing data, does not suggest the combination of Felthausen and Berne for estimating retail product sales. Therefore, for at least this reason, it is respectfully submitted that a prima facie case that the claims of the present invention are obvious has not been established.

Further, even if Felthausen and Berne are viewed in combination, their combination does not disclose Appellant's inventive sampling procedure in which sampled sales data from the "retail" universe of outlets is supplemented with sampled sales data from a "wholesale" universe of outlets to obtain a more complete statistical description of the market for deriving a statistically valid estimate of actual retail product sales at unsampled outlets.

For this reason also, it is respectfully submitted that a case that the claims of the present invention are obvious has not been established.

III. Conclusion

For the reasons set forth herein, as well as for the reasons set forth in Appellant's Brief, Appellant respectfully requests reversal of the rejections and allowance of claims 1-18.

Dated: Feb 21, 2006

Respectfully submitted,

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